

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAN 22 2001

PATRICK FISHER
Clerk

JESUS JOHN HERNANDEZ,

Plaintiff-Appellant,

v.

COLORADO MOTOR VEHICLE
DEALER BOARD; COLORADO
STATE DEPARTMENT OF
REVENUE; COLORADO
ATTORNEY GENERAL,

Defendants-Appellees.

No. 00-1131
(D.C. No. 99-S-861)
(D. Colo)

ORDER AND JUDGMENT *

Before **BALDOCK** , **PORFILIO** , and **BRORBY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Jesus John Hernandez appeals from the district court 's grant of summary judgment to defendants on his civil rights claims. In his complaint, appellant alleged that defendants violated his constitutional rights in connection with the denial of his application for a Motor Vehicle Salesperson License and a subsequent representation to the United States Parole Commission that he had falsified his application, resulting in the revocation of his parole and his reincarceration. The magistrate judge recommended that defendants' motion to dismiss be construed as a motion for summary judgment and that it should be granted. After appellant's objections, which the district court reviewed de novo, the court accepted the magistrate judge's recommendation and entered judgment for defendants. This appeal followed. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court 's grant of summary judgment de novo, applying the same standards as that court pursuant to Fed. R. Civ. P. 56(c). *See Simms v. Okla. ex rel. Dep't of Mental Health & Substance Abuse Servs.*, 165 F.3d 1321, 1326 (10th Cir.), *cert. denied*, 120 S. Ct. 53 (1999).

On appeal, appellant contends that the district court 1) wrongly granted summary judgment on the basis of defendant Clark's affidavit and in light of disputed issues of fact, 2) wrongly allowed late filing of Clark's affidavit, 3) should have given him leave to amend his complaint, 4) wrongly rejected his due process and equal protection claims, and 5) improperly concluded that Clark

was entitled to qualified immunity. After careful review of the entire record on appeal together with the parties briefs in light of the applicable law, we conclude that the district court correctly decided this case. Therefore, for substantially the reasons stated in the district court 's Memorandum Opinion and Order dated February 18, 2000, the judgment of the United States District Court for the District of Colorado is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Bobby R. Baldock
Circuit Judge